

**FLOOD CONTROL ADVISORY BOARD  
MINUTES  
May 26, 2004**

Melvin Martin, Chairman called the monthly meeting of the Flood Control Advisory Board (FCAB) to order at 2:10 p.m. on Wednesday, May 26, 2004.

**Board Members Present:** Melvin Martin, Chairman; Scott Ward, Vice-Chairman; Dewayne Justice; Hassan Mushtaq (for Thomas Callow); Kent Cooper, Secretary, Paul Cherrington, Ex Officio; Hermant Patel.

**Board Members Absent:** Thomas Callow, Ex Officio

**Staff Members Present:** Tim Phillips, Acting Chief Engineer and General Manager; Julie Lemmon, General Counsel; Kevin Costello, County Attorney; Dick Perreault, CIP/Policy Manager; Russ Miracle, Division Manager, Planning and Project Management; Doug Williams, Planning Branch Manager; Linda Reinbold, Administrative Coordinator; Rob Knighton, Planning Project Manager; Emili Kolevski, Project Manager; David Boggs, Sand and Gravel Management, and BJ Johnston, Clerk of the DRB.

**Guests Present:** Ed Fritz, MCDOT; Teri George, DEA; Javier Guana, FBQD; Shien Shiau, Primatech; Garry Rice, Kirkham Michael; Jan Farmer, Gault Group; Rusty Bowers ARPA; Liz Clendenin.

1) APPROVAL OF THE MINUTES OF THE MEETING OF APRIL 28, 2004.

ACTION: It was moved by Mr. Justice and seconded by Mr. Cooper to approve the minutes as submitted. The motion carried unanimously.

2) 26<sup>TH</sup> AVENUE AND VERDE LANE DETENTION BASIN AND STORM DRAIN PROJECT – IGA FCD2004R002.

Emili Kolevski, Project Manager presented IGA FCD2004R002 which defines the responsibilities of the District and the City of Phoenix for the 26<sup>th</sup> Avenue and Verde Lane Detention Basin and Storm Drain Project.

Discussion:

*Justice:* Can we go back to the slide with the project area outlined in blue? There at the top, are we going to have some type of pipeline there?

*Kolevski:* Yes, there are going to be two storm drains. They will be along 26<sup>th</sup> and 25<sup>th</sup> Avenues.

*Justice:* So there is some type of collection basin up there?

*Kolevski:* There will be inlets at several places along either side of both streets.

*Justice:* Ok. Mr. Chairman, I would just like to mention that it would have been helpful to have this picture before the meeting. We talked about that last meeting.

*Patel:* How many homes are we removing from the floodplain?

*Kolevski:* Mr. Chairman, Mr. Patel, we will be removing approximately 25 homes. There is no delineated floodplain in the area. We are just removing them from the flood hazard.

**ACTION:** It was moved by Mr. Justice and seconded by Mr. Mushtaq to approve the item as submitted. The motion carried unanimously.

3) THE SAND AND GRAVEL MINING FLOODPLAIN USE PERMIT APPLICATION GUIDELINES.

David Boggs, P.E. CFM, Principal Engineer, presented the revised Sand And Gravel Mining Guidelines.

*Justice:* Previously we had an 8-page document, so obviously we have a lot more information here than we had before. Are there any new requirements or changes to the basic requirements?

*Boggs:* I don't believe so. What we have is a lot more volume and a lot more specificity in what we are looking for. What was missing in the 8-page document was the detail of what we were expecting. The expectation on our side has not changed.

*Justice:* So what you're telling me is that what we are really trying to do here is to make it easier and more understandable for people to complete the application.

*Boggs:* Mr. Chairman, Mr. Justice, yes, that is correct.

*Cherrington:* You say that you did this collaboratively with ARPA. Are they here and do they agree with these guidelines?

*Martin:* Is there a representative from ARPA who would like to address the Board?

*Farmer:* Mr. Chairman, Members of the Board, this is a bit unexpected, Rusty Bowers has been delayed, so I am a bit unprepared. I'd like to commend the District on preparing the guidelines. I think they have been long awaited. The cooperation in putting the guidelines together is outstanding.

There are a few concerns that I can talk about in regards to ARPA...

*Phillips:* I spoke with Rusty Bowers earlier this week. He said that he would give us a list of some of the concerns ARPA has, that they are not technical in nature, more editorial, things that seemed to draw a conclusion that wasn't

necessarily intended. I told him that I didn't think we had a problem with looking at those things from an editorial standpoint and adjusting or removing them so that they do not appear to draw an unnecessary conclusion. I don't know if that cuts to the chase of what Ms. Farmer would like to comment on

*Farmer:* It does. I'd like to use a few examples, if you don't mind. One of the things that I would like to see in the guidelines is that these are to be utilized as a cookbook type guide to compliance. One of the concerns, on the first page of the overview it reads "These guidelines for sand and gravel floodplain use permits will update the existing sand and gravel permitting policies to achieve the following regulatory and management objectives:" To me, that statement implies that it is a regulatory tool rather than a guideline. That is just one of the small perceived interpretations that could be taken from the document. I think as Mr. Phillips has pointed out, some of the syntax of the guidelines could be reworded for easier interpretation.

*Martin:* Tim, Julie, actually what we are trying to do is establish a standard for the permit, not the permit, is that correct?

*Phillips:* Mr. Chairman, these guidelines essentially reflect what is in the floodplain regulations. That is the regulatory function. What the guidelines do is offer ways to get the permit quicker or a more concise way by providing the information we need to manage the floodplains. Being guidelines, they are more of a suggestion on the way to go about getting the permit as opposed to "thou shall do it like this or thou shall not get the permit." What is key is that we meet the floodplain regulations. We are offering in the guidelines the way to do that quickly, identifying the information that we need to issue the permit.

*Farmer:* Some of the other concerns are the indication that all aggregate mining should be removed completely, or that we should not mine within the floodway. That is a new definition. Arizona state statutes do not stipulate whether you are in the floodplain, they only stipulate that you show compliance within the regulations for permitting of aggregate mining. You can understand that, provided the requirements of hazard protection is complied with in the operation, regardless of whether they are in the floodplain or floodway should not bear on the permitting.

*Boggs:* Mr. Chairman, I can address that. I think Ms. Farmer is concerned about the policy statement at the beginning of the document. Section 1 says that whenever feasible, sand and gravel mines should be located outside of the floodway. However, there is nothing in the document that prevents mining in the floodway, but it seeks to preserve the state statute requirement that any impact generated by this site during a 100-year event be contained within the property boundaries. What that means is that if you mine deep into a floodway you have to be aware that you could have an impact on the overall sediment balance in the river and have migration up and down stream. These issues have to be addressed. We are not trying to preclude mining in the floodway. There is and always has been the requirement that more

engineering study and analysis can enhance structural protection is needed to mine in the floodway and floodway fringe.

*Farmer:* I don't think that providing the compliance to do that is the concern, it is the perceived interpretation.

*Phillips:* Mr. Chairman, I would offer to you that the Board approve the item but recognize that we have some comments and semantic issues that we have to deal with within the guidelines that are not technically based but more editorially based and that before it is sent to the Board of Directors we will address these issues. If we find that we have a real problem with agreeing on the changes or if there is a substantial change in the document that you are approving today, we will bring the guidelines back to you for review.

*Farmer:* I would like to make a recommendation that we postpone approval. One of the reasons is because the guidelines involved are not a complete document. Section 7 is still awaiting the input from the consultants. Personally, I would like to see ARPA members actively participate in reclamation guidelines and design. One of the reasons is because they are the miners, this is their industry and they are focused on the operation dynamics on their site. The other concern was alluded to by Mr. Boggs; it was regarding the watercourse master planning guidelines and development of regulations. Part of my concern in regards to the watercourse master planning is the development of recreational usages in the reclamation plan. I don't know if that is part of the industry's objective, to add to the water course master plan criteria of providing a benefit or increasing the vegetative or aesthetic value. I have a bit of concern with the direction that is going in regards to the floodplain regulations. I think the technical portion of the guidelines is solid and quite good. The other concern I have is Section 6. I would like to throw this out, if there wasn't the criteria in some of the technical information needed for determining the zone areas is quite sophisticated. I think the District is really a star in this area of sedimentation study and channel degradation. I wonder if there couldn't be a stipulation for flexibility in Section 6 to provide for some cost sharing. If the operator could provide the surveying and mapping and perhaps the in-house sources at the District could provide some of the engineering design. That's just an idea.

*Martin:* I just want to say, and I don't know how the rest of the Board feels about it, I think that the comments you have made need to be put into consideration but I don't think we want the industry to write our guidelines. We can certainly take their input and consider that. I'm certain that Mr. Boggs has done that.

*Farmer:* But Mr. Chairman many times industry and regulatory agencies work together you find a successful blend where you aren't in the future dealing with litigation or issues of misunderstanding. I think sometimes when industry and regulatory agencies work together, it is a dynamic opportunity.

*Martin:* But you have had that opportunity since February. This item was presented to us in February and we made our comments. I'm sure you had this information in February. Now we are in May.

- Phillips:* Mr. Chairman, if I may comment, I think that we have had a good relationship with the rock products industry in trying to develop these guidelines. The question regarding the reclamation guidelines in Section 7, we just initiated that portion of the consultant contract to look at that portion of the guidelines which is why it is excluded. I would not recommend that we hold up the over all package for the reclamation guidelines.
- Martin:* You will hold up Section 7?
- Phillips:* We don't have Section 7 to produce yet. In fact, we will be working with the industry on the reclamation guidelines because we recognize that they certainly have an interest in how they are fashioned, especially under the context that they are guidelines.
- Martin:* You want to withhold Section 7 from this vote?
- Patel:* What exactly would we be approving?
- Phillips:* You would be approving the guidelines as written with the exception of Section 7, which is not part of it, with an understanding that the editorial comments will be considered for incorporation into the document provided they do not substantially change the document in front of you now.
- Justice:* In an industry that has regulations that we work with, I tend to agree with Ms. Farmer that while we have the ultimate responsibility for approval, when you have industry in the private sector trying to do things, we do need to listen to their input on how things are done and why they are done that way, and the options they have. Because we need the products, they have to make a living, as do the rest of us. Sometimes the industry has found ways that are good, more streamlines and a better use, than those of us who haven't participated in the industry. I do hope that our staff will listen to these recommendations and where feasible make some changes.
- Boggs:* Mr. Chairman, we value the input from rock products and we do not dismiss them in any way. We are not trying to put anyone out of business. We are trying to ensure the public health and safety is protected. As far as what Ms. Farmer raised regarding cost sharing, I don't think the guidelines is the place to address that issue. Of course whenever we have any kind of study that has already been done, we make that information available to those seeking a permit. In the guidelines, I don't think we want to go there because we are trying to specify what the guidelines are to ensure public safety. Where the money is going to come from and the acquisition of data is not the main issue. The main issue is to protect the public health and safety and that is what the guidelines aim to do.
- Martin:* Does the City of Phoenix have specifications for sand and gravel mining?
- Mushtaq:* Mr. Chairman, we do have some special zoning guidelines. Once again, we do not use those as a regulatory tool but as a guideline for special use permits.

- Martin:* Julie, has anyone looked at them to compare them to what we are doing?
- Lemmon:* Not that I am aware of. I am not familiar with the zoning requirements for sand and gravel. Again, these being just guidelines, they are unique to the District in that we are trying to take our floodplain regulations and give someone guidance on how they could come in for a permit that would help them meet those requirements in the District's duly adopted regulations. These are not regulations, these are just guidelines detailing what type of information is needed. I think they would be extremely helpful; I am not going to argue over the semantics at this moment, but as far as I can understand the technical requirements pretty much meet with everyone's approval.
- Boggs:* Mr. Chairman, there is no jurisdiction in Maricopa County that has any engineering or technical guidelines for permitting. Those that are there are related to zoning issues and land use issues. I am not aware of any other regulations, procedures or guidelines out there in the county from which we could learn.
- Justice:* Mr. Chairman, I would just like to say that I agree with the statement about cost sharing. I think that is a separate issue and something that could or should be considered at the time it comes up.
- Bowers:* We are in total agreement. May I just point out why the semantics are important? Last month one of our superior courts used as a basis in a decision from the judge, an opinion letter from the Attorney General. That was used as the basis for a court decision. When we are at odds with the District regarding the regulatory implementation of any kind and it moves into a litigation stage, if the court can use the semantics of a guideline that we agreed with, in establishing how a regulation might be implemented, that makes those guidelines that much more important. So when it says that aggregate mining should be located outside the regulatory floodway whenever feasible, we would rather it say "if you can address all hydraulic concerns, you are welcome to mine in the floodway." See there are two different ways to say the same thing. So we would feel that in those preliminary words to the technical data that as Ms. Lemmon has pointed out, that these guidelines are in fact a great benefit to us to expedite our workings with the District. If we can perform according to the technical guidelines to expect a quick review, it saves us money time and energy.
- Martin:* How much input have you had since February when this item was first brought before us?
- Bowers:* There has been no impediment to our input at all. The technical data has been great. Early on they mentioned this and we said that we knew no one wants to just walk out and mine in the floodway. However, when our counsel pointed out last month what happened and when he looked at those words, he said that was of great concern. He would like to see those words finessed a bit so that there doesn't seem to be a bias against us unless we can prove otherwise. We would rather be neutral in the statutes.
- Martin:* How does the staff feel about that?

- Boggs:* One of the problems with mining in the floodway is our regulation, and we cannot compromise on this, does not allow for the processing of the material or stockpiling above grade in the floodway. So any operation that needs to go on in the floodway also needs to have some property up in the fringe to at least stockpile. Otherwise, that particular site is not feasible for mining. So we thought that this language was adequate to recognize that floodway mining is still possible but a floodway parcel alone would not be adequate for a mining operation.
- Martin:* I certainly have that opinion. I was here in 1979 when Arizona Sand and Rock washed our bridges away. They were mining right down in the floodway.
- Cooper:* I certainly would have been a lot more comfortable if Mr. Bowers had provided exactly what changes they are proposing. By the examples they have given, I can certainly understand why they would have some problems. I tend to agree with the staff's recommendation that ARPA and the staff try to work out the semantics and move forward to the Board of Directors. I see no reason to wait if the technical information is correct. It has been my experience that we all have a different way of looking at language and I am not going to be lenient to give away more in the language than we actually have. There are two different perspectives; we want to preserve the authority that we have without creating an unnecessary bias. We are going to ask the staff to review your input and make a judgment call as to whether to come back before this Board or not.
- Patel:* How many places in the document does ARPA have issues with the wording?
- Bowers:* We are not here to recommend that you do not approve this document. We support the position of the District. If there is a way to soften the wording so that it can not be construed, that we are saying that we shouldn't be mining in the floodway.
- Patel:* Is it just that one instance of language or are there many?
- Bowers:* The technical data is wonderful. Reclamation in Section 7 we agree because we are going to be promoting in the legislature a statewide reclamation statute. One does not currently exist and ARPA feels we need one. We don't want to be at odds with the County as we move through that.
- Patel:* I know this must have been a tough job, congratulations on getting this far.
- Martin:* I have one more question. How many of the sand and gravel companies are owned by national organizations?
- Bowers:* A lot.
- Martin:* Have all of them been notified of this?

*Bowers:* We have about 48 production companies in ARPA and I can't think of any major company that is not a part of ARPA. Therefore all companies are notified and we represent them. If they don't want our representation, they can have their own representative. There has been no impediment from the District, to have either us, or the personal representative, to come speak with the District if they don't think we are doing our job. I know they have spoken with different representatives.

**ACTION:** It was moved by Mr. Callow and seconded by Mr. Justice to approve the item as submitted. The motion carried unanimously.

#### 4) COMMENTS FROM THE CHIEF ENGINEER AND GENERAL MANAGER

*Phillips:* Mr. Chairman, as you are aware, there have been some issues with the State Land Easements and the Powerline, Vineyard and Rittenhouse Flood Control Structures. The State Land Commission has declared our easements to be invalid. The District has been maintaining these structures since their construction under an agreement with the NRCS. However, since the State Lands Commission has declared our easements to be invalid we no longer feel that we can maintain these structures under that agreement. You have copies of a letter to Mark Winkleman, State Land Commissioner, stating that we will not compensate the state for use of these easements and will no longer exercise any rights granted by it. There is a similar letter that has been sent to the NCRS notifying them that because of our inability to operate and maintain the structures due to the State Land issue, that we will no longer maintain those structures.

The second item I have is on the Gillespie lawsuit. It is now in with the jury. Closing arguments were yesterday afternoon. It is now up to the jury to decide which direction goes forth on the Gillespie Dam and the Gila River issues. We will let you know as soon as we know something.

#### 5) OTHER BUSINESS AND COMMENTS FROM THE PUBLIC

*Clendenin:* Good afternoon, Mr. Chairman, members of the Board. My name is Liz Clendenin, 5229 E. Doubletree Rd, Paradise Valley. I am here regarding the Doubletree Road Project, which is finished except for some housekeeping things and issues that residents have raised. During the duration of the project, there were many residents who paid close attention to everything that was being done. They were out there watching. The reason they were so interested was because it was in their front yard, back yard, side yard, in their house, in their pool, you name it. It was an interruption beyond what anyone could possibly imagine. It is now done.

We had conversations with many of the subcontractors, many of the Blucor people, with your engineers. By and large, most of those issues were taken care of when we spoke to those people or talked to town officials or Scott Vogel. There were some that did not get resolved. We were concerned because some of the engineers that were doing the surveys for the as built plans singled some of us out to let us know that they were unhappy with some of the things that Blucor had done. Well the project was almost done, so who the heck cared now? Get it done, let's go home and forget about it.

However, recently we had a couple of light rains, not flooding rains. At the Indian Bend Wash where the Doubletree Project flows into Indian Bend Wash water ponded and stood for a week. The engineers had made it clear to some of us that Blucor had cut corners, had not followed the specs and had covered it up before your engineers came to inspect it. Again, we just said, oh well, so what. Now, after two minimal rains, to have a pond right there and have it sit for a week is not acceptable. I don't think the county, when they are sending out notices about the West Nile Virus, don't have standing water, etc...would look very favorably on that.

Because of the issues these engineers brought to the residents' attention, we are asking that the Advisory Board approve an independent review of the original specs and the as built plans to see if Blucor did indeed follow the specs or if they were changed.

Second, I have some pictures here. These might be irrelevant at this point, but some of you might like to see them. This is sewer line, and there were 3 or 4 places where this was done, this particular line is on 56<sup>th</sup> St. just south of Doubletree. The gentlemen there took these photos.

*Martin:* Liz, let me interrupt you for just a moment. Julie, we can't vote or act on this, correct? It really needs to be something that the staff investigates and puts on the agenda. Is that right?

*Lemmon:* Right, Mr. Chairman. You can certainly hear Ms. Clendenin's concerns and then the staff will investigate and we will follow up with an agenda item.

*Clendenin:* This sewer line that you are looking at here is broken. I don't think we were aware that the sewer line was there. In spite of the District's honest efforts to find everything and to put it on the plans, things were missed; this was probably one of those instances. But there were 3 or 4 other areas in the project where sewer lines like this had to be replaced. In this case, the line was broken and left to drip raw sewerage from a Thursday afternoon until Saturday afternoon or Sunday morning. If you look at the pictures, you will see a plastic pipe and duct tape holding it together. This pipe was left that way for almost a week before they got back and put come couplings on it. The question that I have for Tim is, did that plastic pipe get replaced or are those plastic pipes the 4-inch sewer line that was used for all the applications where this needed to be done?

*Phillips:* I don't know.

*Clendenin:* That's a question I think we should answer because those lines are going through the middle of those water lines. If you look at the photos, you'll be able to see that. What happens when debris catches on that? What happens when the water gushes through there strongly enough over a period of time and the line starts to leak? We will have raw sewerage going into Indian Bend Wash.

*Martin:* Why don't you tell us your basic concerns? Then we'll have the engineers tell us next month how they answered you concerns.

*Clendenin:* I think primarily, if we do a review of the as built plans compared to the original specs that is what residents are asking.

*Ward:* I just want to make a comment. When this was coming through, you might remember calling me, Jeff Cook also called me, I know this was a very sensitive project. I looked at a lot of the plans myself. This is something I do on a daily basis when building subdivisions. There are all sorts of utility crossings, as you know, all we were trying to is flood control. I think to help you realize, this is something that the politicians in your area really wanted. I apologize for the hardship that it cost you and your neighbors. Could you send us a written statement of concern? Then we can take a look at your concerns and respond to them. As you know, ma'am, sometimes in the field you have to modify things from the plans in order to do things properly. So there might be some specs out there that vary from the original plans but sometimes logic in the field overcomes what was drawn earlier.

*Clendenin:* That's a possibility. But when the engineers that are hired to do the survey and do the as builds make those comments to the residents, that certainly sends up a red flag for us.

*Martin:* Sure it does. We are happy to hear your concerns and we will address them.

*Clendenin:* Thank you.

*The meeting was adjourned at 3:05pm*